

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MONTOREY D. HARPER,

Plaintiff,

vs.

US DOJ,

Defendant.

CASE NO. 16cv1123-LAB (NLS)

ORDER OF DISMISSAL

Montorey Harper has sued the US DOJ under 42 U.S.C. § 1983 because police officers drive by him. (Docket no. 1.) He claims that highway patrol has driven by him for years, and the “City [of] Los Angeles used it[s] police officer today [at] about nine to harass [him].” (*Id.*) He suggests that this happened because “the United States knows [he has] suits against it.” (*Id.*) He seeks “1,000,000,000,000,000,000 . . . or the largest amount allowed under the law.” (*Id.*) He also moves to proceed in forma pauperis (IFP). (Docket no. 2.)

I. IFP Motion

All parties instituting a civil action in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. See 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Harper moves to proceed IFP, and contends that he

only has \$5. (Docket no. 2.) Having reviewed Harper's affidavit of assets, the Court finds that he's unable to pay the fees or post securities required to maintain a civil action. See CivLR 3.2. The motion to proceed IFP is **GRANTED**.

II. Screening

A complaint filed by any person proceeding IFP is subject to sua sponte dismissal, however, if it's "frivolous, malicious, fail[s] to state a claim upon which relief may be granted, or seek[s] monetary relief from a defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam). While the Court "ha[s] an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt," *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010), it may not "supply essential elements of claims that were not initially pled," *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

In order to state a claim under 42 U.S.C. § 1983, Harper must allege facts to show: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged deprivations were committed by persons acting under the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988). Harper has alleged no violation of a Constitutional right, so he hasn't stated a claim upon which § 1983 relief can be granted. And he has sued the United States Department of Justice—an entity that isn't acting "under the color of state law." This action is frivolous and is **DISMISSED**. Amendment under the circumstances of this case would be futile.

III. Vexatious Litigant Statute

A search reveals that Harper has filed 10 similar actions in the Southern District of California within the last two months. See 3:16-cv-00763-AJB (BLM), 3:16-cv-00765-BTM (JLB), 3:16-cv-00766-AJB (BLM), 3:16-cv-00768-AJB (BLM), 3:16-cv-00769-AJB (BLM), 3:16-cv-00834-LAB (WVG), 3:16-cv-00992-GPC (BGS), 3:16-cv-01122-JAH (KSC), 3:16-cv-01123-LAB (NLS), 3:16-cv-01124-AJB (JLB). The Court finds this behavior vexatious. Harper is warned that federal courts have the authority to declare litigants

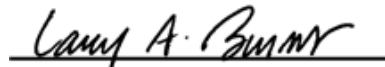
1 vexatious and to impose pre-filing conditions on them. 28 U.S.C. § 1651(a); *Molski v.*
2 *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). Harper is also warned that
3 courts may impose sanctions on a litigant that submits a frivolous pleading. Fed. R. Civ. P.
4 11.

5 **IV. Conclusion**

6 This case is **DISMISSED WITHOUT LEAVE TO AMEND**. Any appeal would be
7 frivolous, could not be taken in good faith, and, under 28 U.S.C. § 1915(a)(3), may not be
8 taken in forma pauperis.

9 **IT IS SO ORDERED.**

10 DATED: May 12, 2016

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12 **HONORABLE LARRY ALAN BURNS**
13 United States District Judge
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